IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1792

UNITED EQUITY CORPORATION, A Corporation;
EDWARD GRANVILLE-SMITH,

Petitioners,

v.

YOUNG PROPERTIES CORPORATION,
A California Corporation, and
its Affiliates, Bankrupt

YOUNG PROPERTIES CORPORATION,
Debtor-in-possession

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WILLIAM N. COGGINS
JOHN H. HARMAN
Coggins, Fireison and
Harman, P.A.
1106 Spring Street, Suite 306
Silver Spring, Maryland 20910
Phone: (301) 587-2880

Counsel for Petitioners

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No.

UNITED EQUITY CORPORATION, A Corporation;
EDWARD GRANVILLE-SMITH,

Petitioners,

v.

YOUNG PROPERTIES CORPORATION,
A California Corporation, and
its Affiliates, Bankrupt

YOUNG PROPERTIES CORPORATION,
Debtor-in-possession

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

United Equity Corporation, and Edward Granville-Smith, the petitioners herein, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on April 12, 1976.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit reported at ____ F.2d ____ (1976) is printed in Appendix A hereto, infra, page 1a. The Journal Entry of Judgment of the United States Court of Appeals for the Ninth Circuit is printed in Appendix A hereto; infra, page 17a. The opinion of the United States District Court for the Southern District of California is reported at 394 F. Supp. 1243 (S.D. Cal. 1975) and is printed in Appendix B hereto, infra, page 1b.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit (Appendix A, infra, page 1a) was entered on April 12, 1976. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. § 1254(i), and 11 U.S.C. § 47(c).

QUESTIONS PRESENTED FOR REVIEW

1. Whether, in a case of first impression, the United States Court of Appeals for the Ninth Circuit erred in its determination that it was without jurisdiction to review the District Court's decision denying the petitioners' motion for transfer of adversary proceedings pursuant to Rule 782 of the Bankruptcy Rules, and as a basis for said determination:

(a) negated the Advisory Committee Notes accompanying Rule 782, and

(b) analogized said motion to a motion pursuant to 28 U.S.C. § 1404(a), and

(c) distinguished "proceedings in bankruptcy" from "controversies arising in proceedings in bankruptcy".

2. Whether the United States Court of Appeals for the Ninth Circuit erred in finding no clear abuse of discretion in that the District Court had weighed the proper factors in deciding not to transfer the above-entitled case, and therefore refusing to remand for reconsideration the abovesaid motion for transfer of adversary proceedings.

STATUTES AND BANKRUPTCY RULES INVOLVED

The statutory provisions involved are 28 U.S.C. § § 1404(a), 1406(a), 2075; 11 U.S.C. § 47(a) and (b). The Bankruptcy Rules involved are Rules 116(b) and (c), and 782. All the foregoing statutes and Bankruptcy Rules are printed in Appendix C, infra, page 1c.

STATEMENT OF CASE

Petitioners, United Equity Corporation and Edward Granville-Smith were, along with EFM Financial Corporation and Edward F. Meyers, named defendants in a suit filed in Bankruptcy Number 73-2052-5-F United States District Court for the Southern District of California on October 24, 1974 by joint plaintiffs, Young Properties Corporation, Bankrupt, and Young Properties Corporation, Debtor-in-possession.

On December 4, 1974, petitioners filed a motion to transfer the adversary proceeding from the Southern District of California to the District of Maryland, pursuant to Rule 782 of the Bankruptcy Rules. Upon a hearing the Bankruptcy Judge denied the motion to transfer. Petitioners sought review of this order in the District Court pursuant to the jurisdiction vested in said Court by reason of 11 U.S.C. § 67. For the reasons stated by the District Court, 394 F. Supp. 1243 (S.D. Cal. 1975) and printed in Appendix B hereto, infra, page 1b, the denial of the motion to transfer was affirmed. Petitioners then sought review in the United States Court of Appeals for the Ninth Circuit pursuant to the jurisdiction vested in that court by reason of 11 U.S.C. § 47(a). The Court of Appeals held that as the order was interlocutory and arose out of a "controversy arising in proceedings in bankruptcy" it was without jurisdiction to hear the appeal, notwithstanding the Advisory Committee's Note to Rule 782 to the contrary. The Court of Appeals however proceeded to treat the appeal as though it was a petition for a writ of mandamus pursuant to 28 U.S.C. § 1651. It held that no clear abuse of discretion existed in the disposition below as the District Court had weighed the proper factors in determining the merits of this case. It is from the dismissal of the petitioners' appeal to the United States Court of Appeals for the Ninth Circuit that the petitioners seek redress in this Court.

REASONS FOR GRANTING THE WRIT

(1) The petitioners respectfully urge that a writ of certiorari should issue in the case *sub judice* because the United States Court of Appeals for the Ninth Circuit has negated the Advisory Committee Notes to one Bankruptcy Rule, and thereby, the status of the Notes in general has been thrown into doubt. The status of the Notes of the Advisory Committee on Bankruptcy Rules[1] should be settled to avoid further confusion and time consuming litigation in the administration and settlement of the estates of bankrupts. In this regard the instant Petition for Writ of Certiorari is consistent with, and in furtherance of, one of the principle policies and purposes of the Bankruptcy Act[2], *viz.* to secure an expeditious administration and settlement of the estates of bankrupts. *E.g. Katchen v. Landy*, 382 U.S. 323, 328 15 L.Ed. 2d 391, 396, 86 S.Ct. 467 (1966). Moreover, it is urged that the United States Court of Appeals for the Ninth Circuit denied the petitioners the statutory forum for review afforded by 11 U.S.C. § 47(a), and did so on bases inconsistent with both the legislative history of that statute and with a reasonable interpretation of it.

The Advisory Committee's Note accompanying Rule 782 states in part:

> . . . An order transferring or retaining a case under § 32 of the Act is reviewable on appeal. *L.F. Popell Co., Inc. v. Delta Airlines, Inc.*, 323 F.2d 50, 51 (2d Cir. 1963) (appeal from order of

---

[1] Originally established in 1960 pursuant to 28 U.S.C. § 331.

[2] 11 U.S.C. 1 *et seq.*

transfer); *In re SOS Sheet Metal Co.*, 297 F.2d 32 (2d Cir. 1961) (appeal from order retaining case). An order transferring or retaining an adversary proceeding under this rule should likewise be reviewable by appeal.

There is no reason in view of this clear expression of the intent of the drafters of Rule 782 to conclude that orders disposing of motions to transfer pursuant to said rule are not reviewable. The United States Court of Appeals for the Ninth Circuit held that the analogy drawn between § 32[3] of the Bankruptcy Act and Rule 782 with regard to reviewability is misguided, and contrary to the Act. This conclusion is drawn from a supposed distinction said to exist between what is being transferred under each respective provision. The action transferred pursuant to the former section is characterized by the Court of Appeals as being a "proceeding in bankruptcy", while the latter action is characterized a "controversy arising from proceedings in bankruptcy". It is because the Advisory Committee "ignored" this characterization "crucial to our jurisdiction under § 24(a) of the Act" (11 U.S.C. § 47(a)) that the Court of Appeals "disregarded" the Advisory Committee Notes.

Petitioners concede that there is authority which supports the distinction between "controversies" and "proceedings" for purposes of review by a court of appeals. *E.g. In re Merle's, Inc.*, 481 F.2d 1016, 1017 (9th Cir. 1973). However, the Court of Appeals for the Ninth Circuit was incorrect in its assessment that the

[3]See Rule 116(b) and (c), 1973 Bankruptcy Rules, which supercede § 32 of the Act (11 U.S.C. § 55), printed in Appendix C hereto, infra, page 1c.

courts have uniformly interpreted § 24(a) as continuing this distinction which existed prior to the enactment of the Chandler Act in 1938[4]. *In re Chicago and E.I. Ry. Co.*, 121 F.2d 785, 791 (7th Cir. 1941); *Dickinson Industrial Site, Inc. v. Cowan*, 309 U.S. 382, 387, 84 L.Ed. 819, 824, 60 S.Ct. 595 (1940) (dicta), reh. den. 309 U.S. 698, 84 L.Ed. 1037, 60 S.Ct. 806 (1940). Both of these cases examined the legislative history of § 24(a) of the Bankruptcy Act and found it was the clear intent of Congress to eliminate from that statute any of the old distinctions between "controversies arising in bankruptcy proceedings" and "proceedings" in bankruptcy. The petitioners respectfully submit that the Petition for Writ of Certiorari should be granted to resolve the apparent conflict between the circuits, between the circuits and this Court, and between the circuits and the legislative history of § 24(a) of the Bankruptcy Act.

As statutory law, 28 U.S.C. § 2075 makes it clear that any disharmony found to exist between the Bankruptcy Rules and the Bankruptcy Act itself as to procedural matters is to be resolved in favor of the former. The Advisory Committee's Notes accompanying Rule 782 is the best authority presently available as to what was contemplated in the Rule as to its substance and reviewability. Courts have routinely accepted similar notes as authoritative in other contexts. *E.g. Delno v. Market St. Ry. Co.*, 124 F.2d 965 (9th Cir. 1942) (Declaratory Judgment Act). Petitioners submit that if there is any disharmony, it is not between the

[4]Act of June 22, 1938, Chapter 575, § 1, 52 Stat. 854.

Bankruptcy Act and the Advisory Committee Notes. Rather, it must be between the Bankruptcy Act and the Rules as properly interpreted in light of their legislative history, *viz.* the Advisory Committee Notes. In such a case the Rules prevail. 28 U.S.C. § 2075.

The United States Court of Appeals for the Ninth Circuit analogized orders with regard to Rule 782 motions to those made with regard to motions pursuant to 28 U.S.C. § § 1404(a), and 1406(a) for the purpose of determining appealability. The petitioners submit that this analogy is misplaced both as to the determination of appealability *vel non*, and as to the merits of a Rule 782 motion, as further expounded below.

(2) The United States Court of Appeals for the Ninth Circuit found that there had been no clear abuse of discretion below as to demand remand for reconsideration, because the District Court had weighed the proper factors in deciding not to transfer this case to the District of Maryland. Assuming, *arguendo*, that the analogy to 28 U.S.C. § § 1404(a), 1406(a) is proper as to the determination of appealability *vel non*, it is still clear that a court of appeals can review through mandamus whether the District Court failed to consider properly the "elements of convenience" inherent in the transfer motion. *E.g. Ellicott Machine Corp. v. Modern Welding Co.*, 502 F.2d 178 (4th Cir. 1974). The Court of Appeals for the Ninth Circuit did exactly this in the case *sub judice*, and determined that the courts below had weighed the proper "elements of convenience".

The District Court had placed heavy reliance upon an analogy to 28 U.S.C. § 1404(a) in order to determine what factors should be weighed in the balance in

deciding a Rule 782 motion. The petitioners submit that this analogy is grossly misplaced. It is readily apparent from a review of the cases under 28 U.S.C. § 1404(a), and implicit in the Court of Appeals for the Ninth Circuit's decision, that 28 U.S.C. § 1404(a) has not been given an interpretation which can be harmonized with the liberal transfer language of the Advisory Committee Note to Rules 782, and 704(f) which respectively state in part:

> . . . it behooves courts of bankruptcy to accord a liberal construction to this Rule 782 in order to minimize hardship to parties served in a part of the country remote from the district where the court of bankruptcy is sitting.
>
> . . . The Court should be particularly hospitable to a Motion to Transfer when the Defendant resides or has his principal place of business at a substantial distance from the District where the case is pending.

The District Court in effect disregarded these Notes, and interpreted Rule 782 according to the strictures which have been placed upon 28 U.S.C. § 1404(a)[5]. An examination of the use of § 1404(a) precludes the conclusion that it was intended to include within its parameters statutes which contain their own transfer provisions, and that § 1404(a) overrides these provisions. As a legislative enactment, 28 U.S.C. § 1404(a) is a statute of broad coverage designed to deal with the fact that the federal venue statutes represent the result of years of *ad hoc* legislative accretion. These statutes, with their own special, liberal venue provisions, were

---

[5] *E.g.*, the first to file principle. *Ellicott Machine Corp. v. Modern Welding Co., supra.*

designed to make the plaintiff's remedy an easy one. To protect the defendants against an excessively inconvenient forum Congress enacted § 1404(a). Two congressional policies are therefore in irreconcilable conflict, and the courts have interpreted § 1404(a) accordingly in a less than liberal fashion. *See Kitch,* Section 1404(a) of the Judicial Code: In the Interest of Justice or Injustice?, 40 Ind. L.J. 99, 137 (1965). These statutes to which § 1404(a) is applicable have no transfer provisions of their own[6]. Section 1404(a) acts upon other statutes by virtue of there being no provision therein for transfer of cases. Rule 782 provides a transfer provision for adversary proceedings under the Bankruptcy Act, and it should not be construed away so as to, in effect, bring the Bankruptcy Act within the parameters of 28 U.S.C. § 1404(a). The analogy pressed by the District Court, and given the imprimatur of the Court of Appeals for the Ninth Circuit, proves too much. If such an interpretation is accepted it not only renders the Advisory Committee Notes meaningless, it likewise makes the Rule itself unnecessary. Absent Rule 782, Section 1404(a) would have been applicable to adversary proceedings under the Bankruptcy Act. Insomuch as 28 U.S.C. § 1404(a) predates the Bankruptcy Rules[7], it cannot be supposed that the Advisory

[6] E.g. FELA, 36 Stat. 291 (1910), 45 U.S.C. § 56 (1958); Clayton Act, 38 Stat. 731, 736 (1914), 15 U.S.C. § § 15, 22, 26 (1958); Securities Act of 1933 § 22(a), 48 Stat. 86 (1933), 15 U.S.C. § 77u(a) (1958); 15 U.S.C. § 78aa (1958); Investment Company Act of 1940, 54 Stat. 844 (1940), 15 U.S.C. § 80a-43 (1958); 28 U.S.C. §1397 (1958) (interpleader); 28 U.S.C. § 1400 (1958) (patents and copyrights); Jones Act, 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1958); 28 U.S.C. § 1391(a) (1958) (diversity jurisdiction).

[7] 28 U.S.C. § 1404(a) was last amended in 1962.

Committee promulgated Rule 782 erroneously supposing that a vacuum existed in the area. The language employed in the Notes is better seen as indicative of an awareness by the Advisory Committee that 28 U.S.C. § 1404(a), otherwise applicable to adversary proceedings under the Bankruptcy Act, had been interpreted in a less than "liberal" manner. The petitioners respectfully submit that the decision of the Court of Appeals for the Ninth Circuit rendered Rule 782 supererogatory, and that the requested writ of certiorari should issue, pursuant to this Court's power of supervision of lower federal courts, to correct the unwarranted negation of a validly created Bankruptcy Rule. The matter should have been remanded to the District Court for reconsideration without reference to any analogy to 28 U.S.C. § 1404(a). It cannot be said that the District Court had properly exercised the discretion lodged in it, when impermissible factors entered into the equation. *National Benefit Life Insurance Co. v. Shaw-Walker Co.,* 111 F.2d 497, 507 (D.C. Cir. 1940).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM N. COGGINS
JOHN H. HARMAN
Coggins, Fireison and
Harman, P.A.
1106 Spring Street, Suite 306
Silver Spring, Maryland 20910
Phone: (301) 587-2880
Counsel for Petitioners

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the Matter of	)	
	)	
YOUNG PROPERTIES CORPORATION,	)	
a California corporation, and	)	
Its Affiliates,	)	
Debtors.	)	No. 75-2553
	)	
YOUNG PROPERTIES CORPORATION,	)	OPINION
Debtor in Possession,	)	
Plaintiff-Appellee,	)	
	)	
vs.	)	
	)	
UNITED EQUITY CORPORATION,	)	
EDWARD GRANVILLE-SMITH,	)	
Defendants-Appellants.)		

Appeal from the United States District Court
for the Southern District of California

Before: CARTER, WRIGHT and GOODWIN, Circuit Judges.
JAMES M. CARTER, Circuit Judge.

This is a case of first impression involving the following issue: does the United States Court of Appeals have subject matter jurisdiction to review a district court order denying a motion to transfer an

adversary proceeding in bankruptcy to another district? The motion to transfer was made pursuant to Rule 782 of the 1973 Bankruptcy Rules (hereinafter "Rule 782"). We hold that we do not have jurisdiction in this case.

Appellee Young Properties Corporation (hereinafter "Young") filed a petition on October 31, 1973, with the bankruptcy court for the United States District Court for the Southern District of California, for an arrangement under Chapter XI of the Bankruptcy Act (hereinafter the "Act"). The bankruptcy court authorized Young to remain in possession of its businesses and to operate the same as a debtor in possession. As a debtor in possession Young was vested by § 342 of the Act [11 U.S.C. § 742] with the title and powers of a trustee appointed under the Act.

Roughly one year later, on October 24, 1974, Young filed a complaint against defendants-appellants United Equity Corporation (hereinafter "United") and Edward Granville-Smith, president of United, and against defendants EFM Financial Corporation and Edward F. Meyers, chairman and owner of EFM. Meyers and EFM are not parties to this appeal.

The complaint sought, in six causes of action, damages for breach of contract, for constructive and express trust, and on a common count. The complaint alleged that on September 25, 1973, United entered into a contract with a third party for the purchase by United of certain properties located in California. In paragraph 7 of this contract United agreed to pay Young a fee of $70,500 on December 31, 1973, for services rendered by Young to United as a finder in connection with the purchase of the property. United never paid the $70,500 to Young.

On December 4, 1974, appellants United and Granville-Smith timely filed a motion to transfer the adversary proceeding from the Southern District of California to the District of Maryland, pursuant to Rule 782. Rule 782 reads:

> "Upon notice and hearing afforded the parties, and adversary proceeding may, in the interest of justice and for the convenience of the parties, be transferred by the court to any other district and shall thereafter continue as if originally filed in such district. An adversary proceeding transferred under this rule shall be referred to a referee by the clerk of the court to which it has been transferred."

In United's motion, accompanied by an affidavit of president Granville-Smith, it was stated that United is a Delaware corporation, has its principal place of business in Maryland, and does not regularly do business in California. It was alleged that to compel United to defend this action in California would work an undue hardship.

Young opposed the motion, essentially on the grounds that it had no relation to Maryland and that prospective witnesses resided in California. Upon a hearing the bankruptcy judge denied the motion to transfer.

United and Granville-Smith petitioned to review this order in the district court. For the reasons stated by the district court, 394 F.Supp. 1243 (S.D. Cal. 1975), the denial of the motion to transfer was affirmed.

I.

Jurisdiction of the Court of Appeals Over Bankruptcy Matters.

The court of appeals is a court of limited jurisdiction, and its jurisdiction is expressly provided for by statute. It is soundly stated in *Grace v. American Central Ins. Co.*, 109 U.S. 278, 283 (1883) that,

> "As the jurisdiction of the circuit court is limited, in the sense that it has no other jurisdiction than that conferred by the Constitution and laws of the United States, the presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears." (citations omitted)

The source of jurisdiction of the court of appeals in bankruptcy matters arising from the district court sitting as a bankruptcy court is § 24a of the Act [11 U.S.C. § 47a, hereinafter "§ 24a"]. Section 24a reads, in the part relevant to this case:

> "The United States courts of appeal, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in *proceedings* in bankruptcy, either interlocutory or final, and in *controversies* arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact. . . ." (emphasis added)

Section 24a, enacted by the 1938 Chandler Act, has uniformly been interpreted by the courts and treatises to distinguish the appealability of "proceedings" from the appealability of "controversies". With respect to

interlocutory orders an appeal will lie from a "proceeding" in bankruptcy but not from a "controversy".

2 Collier on Bankruptcy, ¶24.27[2] (14th Ed., rev. 1975), at 762 states,

> "[T]he 1938 Acts maintains the long existing distinction between 'controversies arising in proceedings in bankruptcy' and 'proceedings in bankruptcy' so as to make only *final* orders in 'controversies' appealable, as contrasted with the right conferred by the Act to appeal from both final and interlocutory orders entered in 'proceedings.'"

In accord is 9 Moore's Federal Practice, ¶110.19 [5] (2d Ed., rev. 1975), at 222:

> "Simply put, and for the sake of simplicity putting aside the jurisdictional sum requirement, an interlocutory order in a proceeding in bankruptcy is appealable; an interlocutory order in a controversy in a proceeding in bankruptcy is appealable only if by virtue of some provision of 28 U.S.C. § 1292." [1]

Not suprisingly, the case law of this and other circuits agree. As recently as 1973, in *In re Merle's Inc.*, 481 F.2d 1016, 1017 (9 Cir. 1973), our court has held,

> "Under subdivision (a) of 11 U.S.C. § 47 [§ 24a of the Act], appeals will lie from either final or interlocutory decrees or orders entered in 'proceedings in bankruptcy'. On the other hand, appeals from orders or decrees entered in 'controversies arising in proceedings in bankruptcy' may generally be taken only when those orders or decrees are final." (citation omitted) [2]

Accord, Diamond Door Co. v. Lane-Stanton Lumber Co., 505 F.2d 1199, 1202-03, n.4 (9 Cir. 1974),

Trieber v. England, 237 F.2d 117, 118 (9 Cir. 1956), *cert. den.,* 352 U.S. 967 (1957), *Peterson v. Sampsell,* 170 F.2d 555, 556 (9 Cir. 1948), and *Goldie v. Carr,* 116 F.2d 335, 336 (9 Cir. 1940). For an exhaustive list of cases supporting this rule *see* 2 *Collier,* ¶24.04 [2], n.35, at 717. *Also see* cases cited in 11 U.S.C.A. § 47, Notes 13, 14, and 15 (West 1953 and 1976 pocket part).

Thus the law compels us to address these two questions: (1) is the order appealed from an interlocutory order, and (2) is the case a "controversy" or a "proceeding" in bankruptcy. If we conclude that the order is interlocutory and it involves a controversy, we have no jurisdiction.

II.

The Order is Interlocutory.

Since this appeal is the first case involving a review of a denial of a Rule 782 motion, the question of whether such an order is interlocutory for the purpose of § 24a appellate jurisdiction has not yet arisen.

The principle generally utilized to distinguish a final order from an interlocutory order is given in *Merle's, supra,* 481 F.2d at 1018:

> "A final order has been defined as follows: 'A decision which finally determines the rights of parties to secure in that suit the relief they seek is a "final decision".' [citation omitted] An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the

> cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." (citations omitted)

Applying this principle to the case at bar, we conclude that the order is interlocutory. All that has been decided is that the breach of contract trial will commence in the Southern District of California and not in the District of Maryland. The merit of the dispute – whether a breach of contract occurred – has not been reached.

An additional reason for our conclusion is that in other areas of the law where an order denying or permitting a transfer of a case has been appealed, such an order has been held to be interlocutory. We consider two instances: § 32 of the Bankruptcy Act [11 U.S.C. § 55] and 28 U.S.C. § § 1404(a) and 1406(a). We cite these examples only for the purpose of defining an "interlocutory order".

Section 32 of the Bankruptcy Act [11 U.S.C. § 55, hereinafter "§ 32"], as revised by Rule 116 of the 1973 Bankruptcy Rules, provides for the transfer of an entire bankruptcy proceeding to any other district, in such cases where the petition was filed in the wrong district or where the interest of justice and the convenience of the parties merit the transfer.[3]

An order denying or permitting such a transfer has been held to be interlocutory. *In re Flexton Corp.,* 208 F.2d 869, 870 (2 Cir. 1953). *See* 2 *Collier,* ¶24.38 [2] at 794-95, text accompanying note 39. We recognize that appellate jurisdiction in *Flexton* was proper even though the order appealed from was interlocutory, because the case involved a "proceeding" and not a "controversy". *See infra,* distinguishing "proceeding" from "controversy".

28 U.S.C. § 1404(a) authorizes a district court to transfer for "the convenience of parties and witnesses, and in the interest of justice" any civil action to any other district where the action might have been brought.[4] 28 U.S.C. § 1406(a) permits a dismissal or a similar transfer if an action is brought laying venue in the wrong district or division.[5]

As to these two sections, 9 *Moore's*, ¶110.13 [6], at 173 states the general rule:

> "An order dismissing an action for improper venue or under the doctrine of forum non conveniens is a final order and is appealable. But an order transferring or refusing to transfer an action to another district or division is an interlocutory order and is non-appealable except by certification under 28 U.S.C. § 1292(b)." (footnotes omitted)

Accord, Shapiro v. Bonanza Hotel Co., 185 F.2d 777, 778-79 (9 Cir. 1950). The Ninth Circuit, along with other circuits, has continued to hold that orders respecting venue entered under § 1404(a) and § 1406(a) are interlocutory in nature. *Pac. Car & Foundry Co. v. Pency*, 403 F.2d 949, 951 (9 Cir. 1968). *See also* cases cited in *Pac. Car, id.*, n.4 and n.5; and cases cited in 9 *Moore's, id.*, n.3.

We hold that an order denying a transfer under Rule 782 similarly should be held to be interlocutory.[6]

III.

The Order Arose From a "Controversy" and Not From a "Proceeding".

The principle uniformly used to distinguish a "proceeding" from a "controversy" was stated in the case of *Tefft, Weller & Co. v. Munsuri*, 222 U.S. 114, 118 (1911):

> "*[C]ontroversies* in bankruptcy proceedings as used in the section do not include mere steps in proceedings in bankruptcy, but embrace controversies which are not of that inherent character, even although they may arise in the course of *proceedings* in bankruptcy." (emphasis added)

The distinction is more specifically stated in *Snow v. Dalton*, 203 Fed. 843, 844 (4 Cir. 1913):

> "[The term controversies] must be limited to cases where third parties claim not *in and under* the administration of the bankrupt's estate in bankruptcy, but, on the contrary, assert some right hostile to the title of the trustee or going to the right of the court to administer the particular estate in the bankruptcy case."

This language from *Snow* was quoted in *In re Nat'l Fin. & Mort. Corp.*, 96 F.2d 74, 75 (9 Cir. 1938) and in 2 *Collier*, ¶24.28 at 767.

Stated succinctly, the rule is, "Quarrels about what belongs in the bankrupt estate are plainly controversies rather than proceedings." 9 *Moore's*, ¶110.19 [5] at 225. This quote appears in *Merle's, supra*, 481 F.2d at 1018.

Specific examples of both "proceedings" and "controversies" are given by *Collier*. "Proceedings" include

the following: the selection of the various bankruptcy officials (2 *Collier*, ¶24.13 [1] at 738), the determination of the fee to be paid to the bankruptcy officials (*id.*, ¶24.14 at 740), an order directing an examination of a debtor's books (*id.*, ¶24.16 at 741), the question of exemptions (*id.*, ¶24.17 at 742), and orders for the sale and disposition of the property of the bankrupt (*id.*, ¶24.18 at 743).

The list of "controversies" includes the following: a proceeding to determine the right to assigned accounts (2 *Collier*, ¶24.29 at 771), a proceeding by a trustee to determine his rights as against a testamentary trustee (*id.*) and an order denying a bankrupt's wife the proceeds of a fire insurance policy in the hands of the trustee (*id.*).

One specific example of a controversy which is similar to the case at bar, in that it involves a contract dispute, is *Goldie v. Carr*, 116 F.2d 335 (9 Cir. 1940). In *Goldie* a receiver petitioned the bankruptcy court for a summary judgment to compel Goldie to turn over certain corporate shares and moneys alleged to be held in trust for the debtor's estate. The court in *Goldie* characterized the claim as follows:

> "In substance and effect the petition appears to be one to enforce performance of a contract to deliver shares of stock and to recover money alleged to be due and payable to the estate."

The subject of the appeal was the bankruptcy court's order overruling Goldie's objection to the jurisdiction of the court to proceed summarily. The court of appeals held that the case was a "controversy", the order was "plainly interlocutory", and hence the court had no jurisdiction over the appeal.

In accord with *Goldie* are *Peterson v. Sampsell*, 170 F.2d 555 (9 Cir. 1948) (a dispute between the trustee and Peterson as to who owned certain property on the date of the filing of the petition in bankruptcy; *Trieber v. England*, 237 F.2d 117, 118 (9 Cir. 1956), *cert. den.*, 352 U.S. 967) (same dispute as in *Peterson, supra)*; and *Merle's, supra*, 481 F.2d 1016 (a dispute similar to that in *Peterson, supra*, which resulted in a compromise, which compromise was set aside by the bankruptcy court upon motion by unsecured creditors of the bankrupt). *Accord, Harrison v. Chamberlin*, 271 U.S. 191, 193 (1926); and 2 *Collier*, ¶24.30 at 773 entitled, "Turnover Orders Against Adverse Claimants."

The case at bar involves a contract dispute as in *Goldie*. Young claims that United has breached a contract, to Young's detriment. Young seeks damages, which damages would be included in the property subject to the bankrupty court's jurisdiction. United makes no claim to share in Young's estate in bankruptcy; to the contrary, United only claims not to be indebted to Young on the contract.

We therefore conclude that (1) the order refusing to transfer an adversary proceeding is an interlocutory order, and (2) this case is a "controversy", not a "proceeding", in bankruptcy. We therefore hold that § 24a of the Act does not give us jurisdiction.

IV.

The Advisory Committee's Note to Rule 782 is Erroneous.

Our holding is contrary to the result recommended by the Advisory Committee to Rule 782. The Committee's Note reads, in part:

> "An order transferring or retaining a case under § 32 of the Act is reviewable on appeal. [citations omitted] An order transferring or retaining an adversary proceeding under this rule should likewise be reviewable by appeal."

The Committee erred in its comparison of appeals under Rule 782 to appeals under § 32 of the Act. It is true that both orders are "interlocutory". (*See* opinion, *supra*, at 6-7.) However, the Committee ignored the fact, crucial to our jurisdiction under § 24a of the Act, that the § 32 cases involved "proceedings" in bankruptcy and not "controversies". One could hardly imagine any issue more in the normal range of bankruptcy administration than where the entire proceeding itself will take place – the issue involved in the § 32 cases. *See, e.g., Flexton, supra,* 208 F.2d 869, 870; 2 *Collier*, ¶24.38 [2] at 794-95, text accompanying note 39.[7] Since the § 32 cases involved "proceedings", jurisdiction in the court of appeals was proper even though the cases involved interlocutory orders.

We conclude that the Committee's Note conflicts with § 24a of the Act, and we therefore disregard the Note.

V.

Mandamus does not lie in this case.

We note that while we have no direct appellate jurisdiction in this case, we are nevertheless empowered to treat this appeal as though it were a petition for a writ of mandamus made pursuant to 28 U.S.C. § 1651.[8] *Shapiro v. Bonanza Hotel Co., supra,* 185 F.2d 777, 779. We further note that under the law of this circuit we are empowered, through power of mandamus, to review district court actions which are "clearly erroneous", *Pac. Car, supra,* 403 F.2d 949, 951-52, under "compelling circumstances", *Kasey v. Molybdenum Corp. of Am.,* 408 F.2d 16, 1920 (9 Cir. 1969).

We conclude, however, that no such clear abuse of discretion exists in this case. The district court weighed the proper factors in deciding not to transfer this case to the District of Maryland, to which state the plaintiff and two of the defendants have few contacts.

THE APPEAL IS DISMISSED.

FOOTNOTES

[1] Appellate jurisdiction by virtue of 28 U.S.C. § 1292 exists in bankruptcy matters (1) for the granting or denying of injunctions, under § 1292(a)(1) [*see McAvoy v. United States*, 178 F.2d 353, 355 (2 Cir. 1940), 9 *Moore's*, ¶110.19 [5] at 222 n.3, and 2 *Collier*, ¶24.27 [2.1] at 762.64]; and (2) possibly under § 1292(b) for a certification of a "controlling question" by a district judge [*see* 9 *Moore's*, ¶110.22 [2] at 259 n.7, and *Pettit v. Olean Industries, Inc.*, 266 F.2d 833, 840 (2 Cir. 1959), J. Lumbard dissenting].

[2] Exceptions to the general rule – exceptions which are not applicable to the case at bar – are injunctions and certifications of controlling questions under 28 U.S.C. § 1292 (*see supra*, note [1]) and extraordinary writs under 28 U.S.C. § 1651 (*see infra*, text accompanying note 8).

[3] Rule 116 (b) and (c), 1973 Bankruptcy Rules, which supersede § 32 of the Act [11 U.S.C. § 55], read as follows:

> "(b) *Transfer of Cases; Dismissal or Retention When Venue Improper*
>
> (1) *When Venue Proper.* Although a petition is filed in accordance with subdivision (a) of this rule, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, in the interest of justice and for the convenience of the parties, transfer the case to any other district. The transfer may be ordered at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion.
>
> (2) *When Venue Improper.* If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised.

> "(c) *Procedure When Petitions Involving the Same Bankrupt or Related Bankrupts Are Filed in Different Courts.* If petitions commencing bankruptcy cases or a bankruptcy case and any other case under the Act are filed in different districts by or against (1) the same bankrupt, or (2) a partnership and one or more of its general partners, or (3) 2 or more general partners, or (4) a bankrupt and an affiliate, the court in which the first petition is filed shall, after hearing on motion and notice to the petitioners and such other persons as the court may designate, determine the court or courts in which the case or cases should proceed in the interest of justice and for the convenience of the parties. The proceedings on the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. Thereafter all the courts in which petitions have been filed shall proceed in accordance with the determination.
>
> (d) *Reference of Transferred Cases.* A case transferred under this rule shall, in accordance with Rule 102(a), be referred by the clerk of the district court to which it has been transferred."

[4] 28 U.S.C. § 1404(a) reads in full as follows:

> "For the convenience of parties and witnesses, in the interest of justice; a district court may tranfer any civil action to any other district or division where it might have been brought."

[5] 28 U.S.C. § 1406(a) reads in full as follows:

> "The district court of the district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought."

[6] Additional examples of orders arising in bankruptcy which have been held to be interlocutory are given in 2 *Collier*, ¶24.38 [2] at 792-95. Included in the list are the following: an order denying defendant's motion for summary judgment (*id.* at 794, text accompanying n.35); an order under the former federal practice denying a motion to transfer a suit from equity to the

law side of the court and to provide for a jury trial (*id.*, accompanying n.32); an order affirming a referee's order disallowing claims for the present without prejudice to the claimant's right to present the claim subsequently (*id.* at 793, accompanying n.23), and an order denying a motion to dismiss a petition for review of a referee's judgment (*id.* at 795, accompanying n.40).

As a contrast to the above orders, 2 *Collier*, ¶24.38 [1] at 790-91, also lists orders which courts have held to be "final". Included in the list of final orders are the following: an order quashing service of process upon some defendants who are not claimed to be jointly liable (*id.* at 790, accompanying n.8); an order providing for the distribution of the proceeds obtained from the sale of securities (*id.* accompanying n.10); an order punishing a bankrupt for contempt and directing his imprison ment (*id.* at 790-91, accompanying n.12), and an order refusing to vacate a permanent injunction (*id.* at 971, accompanying n.14).

[7] *See also, e.g., Bass v. Hutchins,* 417 F.2d 692 (5 Cir. 1969); *Hawaiian Investors v. Thorndal,* 339 F.2d 807 (8 Cir. 1965); *L.F. Popell Co., Inc. v. Delta Airlines, Inc.,* 323 F.2d 50 (2 Cir. 1963); *In re S.O.S. Sheet Metal Co.,* 297 F.2d 32 (2 Cir. 1961); *Haas v. Gerstel,* 134 F.2d 803 (5 Cir. 1943), and *Jackson v. Lynch,* 111 F.2d 1003 (9 Cir. 1940), *cert. den.,* 311 U.S. 674 (1940).

[8] 28 U.S.C. § 1651, "Writs", reads in full as follows:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> "(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction."

MENT

United States Court of Appeals

FOR THE NINTH CIRCUIT

le matter of

PROPERTIES CORPORATION, a
ornia corporation, and its
iates,

Debtors.

PROPERTIES CORPORATION,
r in Possession,

Plaintiff-Appellee,

D EQUITY CORPORATION, EDWARD
ILLE-SMITH,

Defendants-Appellants.

No. 75-2553

DC# Bcky No. 73-2052-5-F

PPEAL from the United States District Court for the SOUTHERN

t of CALIFORNIA

HIS CAUSE came on to be heard on the Transcript of the Record from the United States

t Court for the SOUTHERN District of CALIFORNIA

and was duly submitted.

N CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the

judgment of the said District Court in this Cause be, and hereby is dismissed.

costs in this court in favor of the

llee and against the appellant in the
nt of $216.60

of printing appellee's briefs $216.60

A TRUE COPY
ATTEST MAY 3 1976

EMIL E. MELFI, JR.,
CLERK
by Deputy

nd entered April 12, 1976

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In Re:	)	Bankruptcy
	)	73-2052-5-F
YOUNG PROPERTIES CORPORATION, a California corporation, and its Affiliates,	)	
Bankrupt,	)	
YOUNG PROPERTIES CORPORATION, Debtor in Possession,	)	
Plaintiff,	)	
v.	)	MEMORANDUM OF DECISION AND ORDER
UNITED EQUITY CORPORATION, a corporation; EDWARD GRANVILLE-SMITH: EFM FINANCIAL CORPORATION, EDWARD F. MEYERS,	)	
Defendants.	)	

Appellants United Equity Corporation ("United") and Edward Granville-Smith appeal from an order of the bankruptcy court denying their motion to transfer an adversary proceeding commenced by Young Properties Corporation ("Young") from the District

Court for the Southern District of California to the District Court for the District of Maryland. Although this court might have approached this motion differently if it had heard it in the first instance, the court would hold that the bankruptcy court's decision was not an abuse of discretion, and would affirm that decision.

Bankruptcy Rule 782, made applicable to Chapter XI cases by Rule 11-61, provides, in part:

> Upon notice and hearing afforded the parties, any adversary proceeding may, in the interest of justice and for the convenience of the parties, be transferred by the court to any other district and shall thereafter continue as if originally filed in such district.

The parties have agreed, and an independent search of the case law indicates, that there are no published decisions dealing with Rule 782. In light of this absence of authority, the bankruptcy court looked for guidance to the Advisory Committee's Notes to the rule, and cases decided under two similar statutes, section 32c of the Bankruptcy Act, 11 U.S.C. § 55(c),[1] which permits the bankruptcy court to transfer entire bankruptcy proceedings, and 28 U.S.C. § 1404(a),[2] which permits the transfer of any civil action "[f]or the convenience of parties and witnesses, in the interest of justice."

---

[1] "The judge may transfer any case under this title to a court of bankruptcy in any other district, regardless of the location of the principal assets of the bankrupt, or his principal place of business, or his residence, if the interests of the parties will be best served by such transfer."

[2] "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

In the proceedings before the bankruptcy court, the parties set forth their grounds in support of and in opposition to the motion by affidavits. They indicate that United is a Delaware corporation with principal place of business in Maryland; all officers, books, and records of the corporation are located in Maryland or its environs, as are potential defense witnesses. The plaintiff is a California corporation which is a debtor in possession under Chapter XI of the Bankruptcy Act in proceedings in the Southern District of California; the corporation's principal place of business, officers, and records are located within this district. Young Properties does not do business on a regular basis or employ agents in Maryland; United has no such contacts with California. The adversary proceeding arises from a dispute concerning a sale of property in the City of Industry, California.[3]

The Findings of Fact and Conclusions of Law of the bankruptcy court indicate two grounds for the denial of the motion to transfer. First, that the proper administration of the proceedings would not be served by a transfer, which would cause an undue burden on the efficient and economic administration of the estate and unduly prejudice existing creditors. Second, the transfer of the proceeding would not be for the convenience of all parties, in that it would be more inconvenient for the plaintiff to try this matter in

---

[3] Two other defendants, EFM Financial Corporation and Edward F. Meyers, did not appear at the hearing on this motion before either the bankruptcy court or this court. Although the appellants represent that these defendants do not object to a transfer of the proceedings, there is nothing on the record to support this assertion.

Maryland than for the defendants to try it in California. This court would hold that this first ground was an improper reason for denial of the motion, but that the bankruptcy court's decision should be upheld based upon the second ground.

Rule 782 permits transfer "for the interest of justice and for the convenience of the parties." As the Advisory Committee's Notes indicate, this rule is a counterpart to recently enacted Bankruptcy Rule 704(f), which permits service of process in adversary proceedings anywhere within the United States.[4] The Committee observed that, as a result of the extension of the territorial limits of service of process, "it behooves courts of bankruptcy to accord a liberal construction to this Rule 782 in order to minimize hardship to parties served in a part of the country remote from the district where the court of bankruptcy is sitting." Bankruptcy Rule 782, Advisory Committee Notes. The Notes to Rule 704(f)(1) state that "a court should be particularly hospitable to a motion for transfer when the defendant resides or has his principal place of business at a substantial distance from the district where the case is pending."

In light of the policy behind the enactment of Rule 782, this court would hold that it was improper for the

[4]Prior to 1938, a bankruptcy court had no jurisdiction to issue process outside of its judicial district. United States v. Tacoma Oriental S. S. Co., 86 F.2d 363, 368 (9th Cir. 1936). With the enactment of the Federal Rules of Civil Procedure, service of process was permitted throughout the state in which the court sat. Rule 4 (f), Fed. R. Civ. P.; Gathany v. Bishopp, 177 F.2d 567, 569 (4th Cir. 1949); Slocum v. Edwards, 168 F.2d 627, 631 (2d Cir. 1948).

bankruptcy court to consider as a major factor its obligation "to insure the most economic and efficient administration of the estate possible so as to protect the existing creditors of the state." It is undisputed that the court does have such an obligation. However, the consideration of this duty in situations arising under Rule 782 would defeat the purpose for which that rule was adopted. In almost all adversary proceedings, it would be in the interest of the bankrupt to retain the proceeding in the district in which the bankrupt filed the suit. Rule 782 refers to the convenience of "the parties"; this language can be read only to mean that the convenience of *all* parties litigant. Any other interpretation would do injustice to the plain language of the rule, would disregard the Advisory Committee's comments, and would severely disadvantage defendants in such proceedings who, as the appellants in this case, would be compelled to litigate the suit far from their homes and places of business.

This situation is different than that which arises when the court considers transfer of the entire bankruptcy proceeding under § 55(c). Thus, *Hawaiian Investors v. Thorndal,* 339 F.2d 807 (8th Cir. 1965) and *In re Triton Chemical Corp.*, 46 F. Supp. 326 (D. Dela. 1942), cited by the appellee, are inapplicable. Those cases set forth five factors to be considered in determining the form for the bankruptcy proceedings: (1) proximity of creditors of every kind to the court; (2) proximity of the bankrupts to the court; (3) proximity to the court of the witnesses necessary to the administration of the estate; (4) location of the assets; and (5) the economic administration of the estate.

In such a §55(c) situation, both the bankrupt and the creditors have an interest in the efficient administration of the estate, because such administration will result in more funds being available for the payment of creditors. In an adversary proceeding, the interest of the defendant, however, is no different than that of defendants in any other civil litigation, that is, its interest is in the efficient resolution of the particular claim against it, regardless of the effect on the bankrupt's estate in general. This court reads Rule 782 as an attempt to provide protection for such defendants. Their interests should not be made subservient to those of the plaintiff, merely because that plaintiff is involved in bankruptcy proceedings.

Accordingly, the more appropriate analogy is 28 U.S.C. §1404(a), which allows transfer of general civil actions. The factors to be considered under this statute are set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947):

> Important considerations are the relative ease to access to sources of proof; availability of compulsory process for the attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. . . . Factors of public interest also have place in applying the doctrine.

Having held that the first ground for denial of the motion was improper, however, this court would hold, in light of the entire record before this court, that the ruling should stand based on the bankruptcy court's Conclusion of Law VI, which states that retaining jurisdiction in this district would be most convenient to

all parties. The issue of whether an adversary proceeding should be transferred is committed to the sound discretion of the bankruptcy court, and its ruling should not be disturbed unless the reviewing court finds an abuse of that discretion. *Cf. Houston Fearless Corp. v. Teter*, 318 F.2d 822, 828 (10th Cir. 1963).[5] "An abuse of discretion has been defined as a 'plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as they are found.'" *P. v. Riles*, 502 F.2d 963, 964 (9th Cir. 1974) (citation omitted). A thorough review of the record discloses no such abuse of discretion. Accordingly,

IT IS ORDERED that the order of the bankruptcy court dated February 6, 1975, should be, and it hereby is, affirmed.

DATED: May 2, 1975.

/s/ W. B. Enright
WILLIAM B. ENRIGHT, Judge
United States District Court

Copies to:

Plaintiff
Defendants

---

[5]The "clearly erroneous" standard of review, made applicable in adversary proceedings under Chapter XI by Bankruptcy Rules 752(a) and 11-61, applies only to findings of fact by the bankruptcy court, and not to the exercise of that court's discretion.

APPENDIX C

STATUTES AND BANKRUPTCY RULES INVOLVED

(1) 28 U.S.C. §1404(a) reads in full as follows:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

(2) 28 U.S.C. §1406(a) reads in full as follows:

The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(3) 28 U.S.C. § 2075 reads in full as follows:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under Bankruptcy Act (11 U.S.C. §1 *et seq.*)

Such rules shall not abridge, enlarge, or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken force.

(4) 11 U.S.C. §47(a) and (b), reads in full as follows:

(a) The United States courts of appeals, in vacation, in chambers, and during their respective

terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: Provided, however, that the jurisdiction upon appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: And provided further, That when any order, decree, or judgment involves less than Five Hundred Dollars ($500.00), an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(5) Rule 116(b) and (c) of the Bankruptcy Rules reads in full as follows:

(b) Transfer of Cases, Dismissal or Retention When Venue Improper -

(1) When Venue Proper. Although a petition is filed in accordance with subdivision (a) of this rule, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct in the interest of justice and for the convenience of the parties, transfer the case to any other district. The transfer may be ordered at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only a timely motion.

(2) When Venue Improper. If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the

convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised.

(6) Rule 782 of the Bankruptcy Rules reads in full as follows:

Transfer of Adversary Proceeding - Upon notice and hearing afforded the parties, any adversary proceeding may, in the interest of justice and for the convenience of the parties, be transferred by the court to any other district and shall thereafter continue as if originally filed in such district. An adversary proceeding transferred under this rule shall be referred to a referee by the clerk of the court to which it has been transferred.